

# Delaware

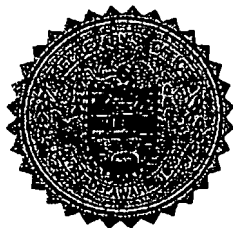
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*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF MERGER, WHICH MERGES:

"NIMBLE ACQUISITION CORP.", A DELAWARE CORPORATION,  
WITH AND INTO "NIMBLE TECHNOLOGY, INC." UNDER THE NAME OF  
"NIMBLE TECHNOLOGY, INC.", A CORPORATION ORGANIZED AND EXISTING  
UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED  
IN THIS OFFICE THE TWENTY-FIFTH DAY OF JULY, A.D. 2003, AT 2:52  
O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE  
KENT COUNTY RECORDER OF DEEDS.



*Harriet Smith Windsor*  
Harriet Smith Windsor, Secretary of State

3050688 8100M

AUTHENTICATION: 2548497

030488353

DATE: 07-25-03

**CERTIFICATE OF MERGER**

**OF**

**NIMBLE ACQUISITION CORP.**

**WITH AND INTO**

**NIMBLE TECHNOLOGY, INC.**

**PURSUANT TO SECTION 251(c) OF THE GENERAL  
CORPORATION LAW OF THE STATE OF DELAWARE**

Nimble Technology, Inc., a corporation duly organized and existing under and by virtue of the General Corporation Law of the State of Delaware ("Nimble Technology"), does hereby certify:

**FIRST:** That the name and state of incorporation of each of the constituent corporations of the merger is as follows:

<b>Name</b>	<b>State of Incorporation</b>
Nimble Acquisition Corp.	Delaware
Nimble Technology, Inc.	Delaware

**SECOND:** That the Agreement and Plan of Merger and Reorganization (the "Merger Agreement") dated as of July 24, 2003, by and among Actuate Corporation, a Delaware corporation ("Actuate"), Nimble Acquisition Corp., a Delaware corporation and wholly owned subsidiary of Actuate ("Acquisition Corp."), Nimble Technology and Andre Turenne, as Stockholders' Representative, setting forth the terms and conditions for the merger of Acquisition Corp. with and into Nimble Technology (the "Merger"), has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations in accordance with the requirements of subsection (c) of Section 251 of the General Corporation Law of the State of Delaware.

**THIRD:** That the name of the surviving Delaware corporation (the "Surviving Corporation") of the Merger shall be Nimble Technology, Inc.

**FOURTH:** That the Certificate of Incorporation of Nimble Technology as in effect immediately prior to the Merger shall be amended and restated in accordance with the Merger Agreement as set forth in Annex A hereto, as of the Effective Time of the Merger, and, as so amended and restated, shall be the Amended and Restated Certificate of Incorporation of the Surviving Corporation.

FIFTH: That an executed copy of the Merger Agreement is on file at the principal place of business of the Surviving Corporation located at Nimble Technology, Inc., 701 Gateway Blvd, South San Francisco, CA 94080.

SIXTH: That a copy of the Merger Agreement will be furnished by the Surviving Corporation, on request and without cost, to any stockholder of any constituent corporation.

SEVENTH: That the merger shall become effective upon the filing of this Certificate of Merger with the Secretary of State of Delaware.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, Nimble Technology has caused this Certificate of Merger to be executed in its corporate name on the 25<sup>th</sup> day of July, 2003.

NIMBLE TECHNOLOGY, INC.

By: \_\_\_\_\_

  
Suzan DelBene

President and Chief Executive Officer

**IN WITNESS WHEREOF**, Nimble Technology has caused this Certificate of Merger to be executed in its corporate name on the 25<sup>th</sup> day of July, 2003.

**NIMBLE TECHNOLOGY, INC.**

By: /s/ Suzan DelBene

Suzan DelBene

President and Chief Executive Officer

Annex A

**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION  
OF  
NIMBLE TECHNOLOGY, INC.**

**ARTICLE I**

The name of this corporation is Nimble Technology, Inc.

**ARTICLE II**

The address of this corporation's registered office in the State of Delaware is 15 East North Street, Dover, Delaware 19901, County of Kent. The name of this corporation's registered agent at such address is Incorporating Services, Ltd.

**ARTICLE III**

The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

**ARTICLE IV**

This corporation is authorized to issue one class of stock to be designated "Common Stock." The total number of shares which this corporation is authorized to issue is One Hundred (100) shares of Common Stock, par value \$0.0001 per share.

**ARTICLE V**

Except as otherwise provided in this Certificate of Incorporation, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors of this corporation is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws of this corporation.

**ARTICLE VI**

The number of directors of this corporation shall be fixed from time to time by a Bylaw or amendment thereof duly adopted by the Board of Directors of this corporation or by the stockholders of this corporation.

## ARTICLE VII

Elections of directors need not be by written ballot unless the Bylaws of this corporation shall so provide.

## ARTICLE VIII

Meetings of the stockholders of this corporation may be held within or without the State of Delaware, as the Bylaws may provide. The books of this corporation may be kept (subject to any provision contained in applicable statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors of this corporation or in the Bylaws of this corporation.

## ARTICLE IX

A director of this corporation shall not be personally liable to this corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to this corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived any improper personal benefit. If the Delaware General Corporation Law is amended after approval by the stockholders of this Article IX to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of this corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law as so amended.

Any repeal or modification of the foregoing provisions of this Article IX by the stockholders of this corporation shall not adversely affect any right or protection of a director of this corporation existing at the time of, or increase the liability of any director of this corporation with respect to any acts or omissions of such director occurring prior to, such repeal or modification.

## ARTICLE X

This corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

## ARTICLE XI

To the fullest extent permitted by applicable law, this corporation is authorized to provide indemnification of (and advancement of expenses to) agents of this corporation (and any other persons to which General Corporation Law permits this corporation to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and

advancement otherwise permitted by Section 145 of the General Corporation Law, subject only to limits created by applicable General Corporation Law (statutory or non-statutory), with respect to actions for breach of duty to this corporation, its stockholders, and others.

Any amendment, repeal or modification of the foregoing provisions of this Article XI shall not adversely affect any right or protection of a director, officer, agent, or other person existing at the time of, or increase the liability of any director of this corporation with respect to any acts or omissions of such director, officer or agent occurring prior to, such amendment, repeal or modification.